AFR

HIGH COURT OF CHHATTISGARH AT BILASPU

Writ Petition No. 1872 of 2002

078

D.P. Verma

-Versus-

The State of Chhattisgarh & others

Post for order on 3rd February, 2006.

Sd/-
Satish K. Agnihotri
Judge

2.2.2006

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

Single Bench: Hon'ble Shri Satish K. Agnihotri, J.

WRIT PETITION NO. 1872 OF 2002

Petitioner : D.P. Verma, Retired M.P.F. & A.S., aged about 75 years, R/o. House No. MIG-213, Nutan Enclave, New Smile Sweets New Sarkanda, Bilaspur.

Versus

Respondents :
1. The State of Chhattisgarh, Through Secretary Finance D.K.S. Bhawan, Raipur.
2. The Director, Finance, Accounts & Pension, Directorate Raipur (C.G.).
3. The State of Madhya Pradesh Through the Secretary, Finance Vallabh Bhavan, Bhopal (C.G.).
4. The Director, Finance, Accounts & Pension, Directorate, Raipur (C.G.).
5. The Treasury Officer, District Treasury, Bilaspur (C.G.).

Present: Shri S.C. Verma, counsel for the Petitioner.
Shri Pankaj Shrivastava, Panel lawyer for the Respondents No. 1, 2, 4 and 5.
Shri Sachin Singh Rajput, counsel for the Respondent No. 3

O R D E R

(3rd February, 2006)

Heard.

1. The present writ petition filed under Article 226/227 of the Constitution of India seeks a direction against the respondents to pay interest for delayed payment of pension and gratuity.

2. The facts in nutshell are that the petitioner was working as Finance & Accounts Officer in the treasury department of undivided State of Madhya Pradesh. The petitioner retired from his office on 28.2.1989 on attaining the age of superannuation. The petitioner was not granted retiral dues immediately. The petitioner started receiving his retiral benefits after a period of more than seven years from 7.12.1996 (Annexure P-2).

3. The Senior Treasury Officer, District Treasury Raipur directed the Treasury Officer, District Treasury, Bilaspur for release of pension and gratuity in April and December 1996 respectively.

4. The petitioner has filed this petition claiming interest on the commuted pension amount i.e. 48450/- from 1.3.1989 to 7.4.1996, the day petitioner received the amount after retirement on 28.2.1989. The petitioner further claimed interest on gratuity i.e. 19800/- from 1.3.1989 to 6.12.1996, the day petitioner received gratuity. The petitioner also claimed interest on the amount of pension i.e. 2324/- from 1.3.1989 to 6.12.1996.

5. The petitioner has made a representation on 5.9.1997 (Annexure P-6) to the Director, Accounts and Pension, Bhopal for payment of interest on the above stated amount for the delayed period. Being aggrieved, the petitioner has filed this petition on 30.8.2002.

6. Shri Sachin Singh Rajput, learned counsel appearing for the respondent No. 3 objected to the jurisdiction of this Court on

the ground that the petitioner retired from Jabalpur. The petitioner was granted pension from Jabalpur and the pension was calculated and released from the office of Director, Treasury and Accounts, Bhopal and as such no cause of action partly or wholly arose within the territorial jurisdiction of the High Court of Chhattisgarh and as such this petition is not maintainable under Article 226 (2) of the Constitution of India.

7. Learned counsel for the respondent No. 3 further submitted on merit that on retirement, the petitioner was paid provisional pension of Rs. 650/- per month and provisional gratuity of Rs. 19305/- on 1.3.1989 by the Joint Director, Treasury and Pension, Jabalpur because the departmental enquiry was pending against the petitioner. Rule 64 of the Madhya Pradesh Civil Service (Pension) Rules, 1976, provides for grant provisional pension and provisional gratuity in case departmental proceeding is pending against the retired employee till completion of the proceeding. It was further submitted that the provisional amount was increased from 50% to 90% on 1.7.1991. The petitioner was paid full pension in the year 1996, when all the proceedings and investigation pending against him was concluded.

8. Shri Pankaj Shrivastava, learned counsel appearing for the respondents No. 1, 2, 4 and 5 adopted the submission made by the respondent No. 3.

9. I have heard learned counsel for the parties and perused the records.

10. Article 226 (2) of the Constitution of India provides that any High Court exercising jurisdiction in relation to the territories within which the cause of action wholly or in part arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

11. In the present case, the petitioner retired on 28.2.1989 from Jabalpur, but the pension was released from the office of Treasury Officer, District Treasury, Bilaspur at the direction of the Senior Treasury Officer, District Treasury, Raipur.

12. The State of Chhattisgarh was carved out from undivided State of Madhya Pradesh on 1.11.2000 under the provisions of Madhya Pradesh Reorganization Act, 2000. Raipur and Bilaspur are situated within the territorial jurisdiction of State of Chhattisgarh and the final pension was released from the District Treasury, Bilaspur at the direction of the Senior Treasury Officer, Raipur and as such it cannot be held that no cause of action even in part has arisen within the territory of State of Chhattisgarh.

13. The Supreme Court in **Oil and Natural Gas Commission Vs. Utpal Kumar Basu and others**[1] held as under :-

> "5. Clause (1) of Article 226 begins with a non abstante clause – notwithstanding anything in Article 32 – and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders

[1](1994) 4 Supreme Court Cases 711

or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

6.It is well settled that the expression "cause of action" means that bundle of facts which the petitioner must prove, if traversed, to entitle him to a judgment in his favour by the Court. In Chand Kour V. Partab Singh Lord Watson Said:

"....the cause of action has no relation whatever to the defence which may be set up by the defendant, nor does it depend upon the character of the relief prayed for by the plaintiff. It refers entirely to the ground set forth in the plaint as the cause of action, or, in other words, to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour."

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of averments made in the petition, the truth or otherwise whereof being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Culcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs 5, 7, 18, 22, 26 and 43 are sufficient in law to establish that a part of the cause of action had arisen within the jurisdiction of the Culcutta High Court".

14. The Supreme Court in **National Textile Corporation Ltd. and others V. M/s. Haribox Swalram and others**[2] held as under :-

"10. Under Clause (2) of Article 226 of the Constitution, the High Court is empowered to issue writs, orders or directions to any Government, authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. Cause of action as understood in the civil proceedings means every fact which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. To put it in a different way, it is bundle of facts which taken with law

[2]AIR 2004 Supreme Court 1998

applicable to them, gives the plaintiff a right to relief against the defendant. In Union of India V. Adnai Exports Ltd. AIR 2002 SC 126 in the context of clause (2) of Article 226 of the Constitution, it has been explained that each and every fact pleaded in the writ petition does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the Court concerned. A similar question was examined in State of Rajasthan V. M/s Swaika Properties, AIR 1985 SC 1289. Here certain properties belonging to a company which had its registered office in Calcutta were sought to be acquired in Jaipur and a notice under Section 52 of the Rajasthan Urban Improvement Act was served upon the company at Calcutta. The question which arose for consideration was whether the service of notice at the head office of the company at Calcutta could give rise to a cause of action within the State of West Bengal to enable the Calcutta High Court to exercise jurisdiction in a matter where challenge to acquisition proceedings conducted in Jaipur was made. It was held that the entire cause of action culminating in the acquisition of the land under Section 152 of the Rajasthan Act arose within the territorial jurisdiction of the Rajasthan High Court and it was not necessary for the company to plead the service of notice upon them at Calcutta for grant of appropriate writ, order or direction under Article 226 of the Constitution for quashing the notice issued by the Rajasthan Government under Section 52

of the Act. It was thus held that Calcutta High Court had no jurisdiction to entertain the writ petition".

15. Applying ratio of the decisions of the Supreme Court cited above, it is well established that the High Court is empowered to issue writs/orders or direction to any Government Authority or person exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part arises for the exercise of such power. In the present case, cause of action which means bundle of facts which the petitioner must prove, has arisen with the territorial jurisdiction of State of Chhattisgarh in part because the order granting pension was passed at Raipur, which is now a part of State of Chhattisgarh. Hence, it is held that this Court has jurisdiction to entertain this petition.

16. On merit, the petitioner was granted provisional pension and provisional gratuity immediately on retirement because departmental enquiry was pending against the petitioner, under Rule 64 of the Madhya Pradesh Civil Service (Pension) Rules, 1976. In such cases, where the departmental or judicial enquiry/proceeding is pending, the retired employee is entitled to provisional pension only i.e. 50% of the total pension.

17. In the present case, even the payment of provisional payment was increased from 50% to 90% by order dated 1.7.1991. In the facts of the case, it cannot be held that the payment of full pension and gratuity was withheld without any reason. The petitioner was paid provisional pension and provisional

gratuity from March, 1989 and thereafter full payment of pension and gratuity was made. Thus, the petitioner is not entitled to any interest on delayed payment of pension as the payment of pension and gratuity was delayed on account of pendency of the department proceedings.

18. The petitioner was paid full pension and gratuity in the year 1996, thereafter the petitioner has not taken any steps for seeking a direction of this Court to grant of interest. The petitioner has filed this petition 30.8.2002 without explaining reasons for such delay. It is well settled principle of law that a writ cannot be entertained after a long delay when the petitioner has failed to establish that delay caused was reasonable. On that account also this petition deserves to be dismissed.

19. For the reasons stated above, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Bablu